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No.

IN THE

Supreme Court of the United States

OCTOBER TERM 1980

JOHN VAL BROWNING,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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April 6, 1981

Questions Presented

1. Can interference relating only to an immaterial matter constitute "obstruction of the proceedings" within the meaning of 18 U.S.C. §1505?

2. Can the counseling of the literal truth and the suggestion not to volunteer unrequested information amount to "obstruction of the proceedings" under Section 1505?

3. Is a routine inquiry, without fair notice of an "investigation," a "proceeding" under Section 1505?

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	i
OPINION BELOW	1
JURISDICTION	1
STATUTE AND REGULATION INVOLVED	2
STATEMENT OF THE CASE	3
A. Proceedings in the Lower Courts	3
B. The Offense	4
1. Introduction	4
2. The Importations and the Special Customs Invoice	5
3. The "Inquiry" by Customs	6
REASONS FOR GRANTING THE WRIT	9
A. The Evidence is Insufficient to Sustain the Conviction for Obstructing the Customs Inquiry Because the Defendant's Advice Related to an Immaterial Matter	9
B. The Literal Truth was Counseled by Petitioner and Furnished to Customs, Thus Voiding a Notion of "Obstruction"	11
C. Petitioner Could Not Reasonably Have Assumed that the Inquiry by Customs Was a "Proceeding" within the Meaning of 18 U.S.C. §1505	14
CONCLUSION	17
APPENDIX:	
Opinion of the Court of Appeals	1a
Judgment of the Court of Appeals	17a
Order Denying Petition for Rehearing	19a
Special Customs Invoice Form 5515	20a

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TABLE OF AUTHORITIES

Cases:

PAGE

Bronston v. *United States*, 409 U.S. 352 (1973) 9, 11, 12, 13, 14

Foster v. *United States*, 265 F.2d 183 (2d Cir.), *cert. denied*, 360 U.S. 912 (1959) 10

Rice v. *United States*, 356 F.2d 709 (8th Cir. 1966) 15

United States v. *Alter*, 482 F.2d 1016 (9th Cir. 1973) .. 13

United States v. *Batten*, 226 F. Supp. 492 (D.D.C., 1964), *cert. denied*, 380 U.S. 912 (1965) 15

United States v. *Browning*, 572 F.2d 720 (10th Cir.), *cert. denied*, 439 U.S. 822 (1978) 4, 14

United States v. *Carzoli*, 447 F.2d 774 (7th Cir. 1971), *cert. denied*, 404 U.S. 1015 (1972) 15

United States v. *Fruchtman*, 421 F.2d 1019 (6th Cir.), *cert. denied*, 400 U.S. 849 (1970) 15

United States v. *Kraase*, 484 F.2d 549 (7th Cir. 1973) .. 13

United States v. *Poutre*, Slip Op. No. 79-1193 (1st Cir.) Dec. 31, 1980 13

United States v. *Ryan*, 455 F.2d 728 (9th Cir. 1972) .. 10, 11

United States v. *Vixie*, 532 F.2d 1277 (9th Cir. 1976) .. 15

Statutes:

18 U.S.C. §542 3

18 U.S.C. §1505 ..... i, 2, 3, 9, 14, 15

Miscellaneous:

Treasury Department Notice of Intention to Delay Requirement of Revised Customs Form 5515

Federal Register, April 19, 1965, at 5862 ..... 3, 6

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vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The petitioner, John Val Browning, prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Tenth Circuit filed in this case (No. 79-1893 below) on November 14, 1980, affirming the district court judgment of conviction.

Opinion Below

The opinion of the Court of Appeals, affirming conviction, is officially reported at 630 F.2d 694 (10th Cir. 1980) and is printed along with the order denying the petition for rehearing, in the Appendix to this petition.

Jurisdiction

The judgment of the Court of Appeals was entered on November 14, 1980 (A. 17a). A petition for rehearing with a suggestion for rehearing en banc was denied on February 5, 1981. (A. 19a).

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Statute and Regulation Involved

Title 18, United States Code §1505:

> "§1505. Obstruction of proceedings before departments, agencies, and committees.
>
> "Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness in any proceeding pending before any department or agency of the United States, or in connection with any inquiry or investigation being had by either House, or any committee of either House, or any joint committee of the Congress; or
>
> "Whoever injures any party or witness in his person or property on account of his attending or having attended such proceeding, inquiry, or investigation, or on account of his testifying or having testified to any matter pending, therein; or
>
> "Whoever, with intent to avoid, evade, prevent, or obstruct compliance in whole or in part with any civil investigation demand duly and properly made under the Antitrust Civil Process Act or section 1968 of this title willfully removes from any place, conceals, destroys, mutilates, alters, or by other means falsifies any documentary material which is the subject of such demand; or
>
> "Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which such proceeding is being had before such department or agency of the United States, or the due and proper exercise of the power of inquiry under which such inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

"Shall be fined not more than $5,000 or imprisoned not more than five years, or both."

* * *

Treasury Department Notice of Intention to Delay Requirement of Revised Customs Form 5515.

Federal Register, April 19, 1965, at 5862.

On February 27, 1965, the Bureau of Customs published a notice of a public hearing regarding revisions in customs Form 5515, Special Customs Invoice Form, which is employed pursuant to §8.15 of the Customs Regulations (19 CFR 8.15).

As a result of comments and submissions received at that hearing, the Bureau of Customs has determined that further revision of the form is desirable. Pending this revision, collectors of customs will accept either the previous edition of customs Form 5515 (without questions 8 and 9 under section V), or the current edition of customs Form 5515, but shall not require that either questions 8 or 9 in section V be completed.

Statement of the Case

A. Proceedings in the Lower Courts

This action began on March 30, 1976 with the filing of a three-count indictment in the United States District Court for the Eastern District of Missouri, naming as defendants the Petitioner, at the time president of Browning, Inc., along with that company and its subsidiary, the Browning Arms Company, importers of sporting arms manufactured abroad. Counts I and II charged that with knowledge of an ongoing United States Customs Service investigation, the defendants obstructed the due and proper administration of the customs laws by advising exporters to give misleading and incomplete answers to the Customs Service, in violation of 18 U.S.C. §1505. Count III charged the defendants with making "false statements" on invoices accompanying imported rifles in violation of 18 U.S.C.

§542. The essence of all three counts was the conceded omission from the importing documents of the payments of assists made by Browning Arms to the exporters throughout the years.

The case was transferred to the District of Utah in May, 1976, and on August 16, 1976, the indictment was dismissed. The government appealed to the United States Court of Appeals for the Tenth Circuit, and on March 14, 1978, the judgment of the district court was reversed. *United States* v. *Browning,* 572 F.2d 720 (10th Cir.), *cert. denied,* 439 U.S. 822 (1978).

On April 19, 1978, the Browning companies entered pleas of *nolo contendere* to Counts II and III of a superseding indictment before District Judge John F. Nangle, in the Eastern District of Missouri, who imposed fines on the corporations totaling $10,000.

The trial by jury of Petitioner began on May 29, 1979 before Hon. Bruce S. Jenkins, United States District Judge for the District of Utah. After four days of deliberations, the jury returned verdicts of guilty on Count I and not guilty on Counts II and III. Petitioner was sentenced to a term of imprisonment of two years, execution suspended, and the maximum fine of $5,000. Petitioner was placed on probation for two years and ordered to pay the costs of prosecution in the approximate amount of $13,000.

Petitioner appealed to the Court of Appeals for the Tenth Circuit, which affirmed judgment of the district court on December 14, 1980, *United States* v. *Browning,* 630 F.2d 694 (10th Cir. 1980), (A. 1a-16a). On February 5, 1981, Petitioner's request for rehearing with a suggestion for *rehearing en banc* was denied. (A. 19a).

B. The Offense

1. *Introduction*

John Val Browning worked for the parent corporation bearing his respected family name for 29 years, the last 15 of which

serving as President and Chief Executive Officer. The Browning name has appeared on sporting and military arms and one of its principal activities was importation of quality sporting arms manufactured abroad according to design specifications furnished by Browning. This case concerns the importation of the relatively inexpensive .22 caliber semi-automatic rifle manufactured for many years until 1970 by Fabrique Nationale d'Arms de Guerre ("FN"), a noted Belgian firearms concern.

The government contended that for almost two hundred separate shipments involving thousands of rifles during approximately six years in the 1960's, the stated invoice price of the .22's did not accurately reflect the true value of the rifles because FN was invoicing and receiving supplementary payments not reflected in the invoice price. Further, it contended that the defendant "obstructed" the attempt of the Customs Service to reconstruct the value of the rifles years later by counseling FN, in response to its request for advice, not to disclose the fact that these payments were made. The defense maintained that the separate payments constituted legal "assists," the disclosure of which Browning and FN believed was not required under an unequivocal Treasury Regulation to that effect. The belief was fostered by the toleration by Customs of this practice, since the answer concerning assists on the Special Customs Invoice (See A. 20a) was left blank on each of the two hundred shipments.

Moreover, four years after the last assist was paid to FN, the Customs Service was able substantively to reconstruct the value of the rifles from truthful responses to its inquiries of FN and Browning concerning the actual costs of the rifle.

2. *The Importations and the Special Customs Invoice*

The rate of duty for rifles under $25 and over $50 is lower than the rate for those between the two amounts. During the mid to late 1960's, the Browning .22 caliber semi-automatic rifle manufactured by FN, if priced over $25 would not have been competitive with domestically manufactured .22's.

"Assists," defined by the Customs Service as payments by importers to exporters for items such as tooling, design, but also, *all* other 'financial assistance," constituted a mutually acceptable method between FN and Browning to compensate FN for its rising costs while maintaining the invoice price of the .22 semi-automatic at a competitive $24.95. Thus, Browning Arms agreed with the principals of FN to make these payments and did so continuously and openly from approximately 1964 until 1970.

Obviously aware that assists paid by importers to exporters might cause a disparity between the actual value of a dutiable item and its invoice price, the Service in 1965 amended its "Special Customs Invoice Form 5515" to require disclosure of all assists not included in the invoice price. Of course, if Customs insisted on such disclosure, by requiring answers to Questions 8-A on the new Form 5515 (A. 21a), the payments being made by Browning Arms to FN would have come to the attention of Customs with each shipment. However, compliance with Question 8 on Form 5515 was never enforced by Customs because the Treasury Department published a Notice of Intention to Delay Requirement of Revised Customs Form 5515 in April, 1965, explicitly stating that Question 8 *did not have to be answered.** Certain of their belief that the assists did not have to be disclosed to Customs, FN continued exporting the .22's with an invoice price of $24.95, leaving Question 8 blank on each of the nearly two hundred shipments through 1970, without a question from Customs.

3. *The "Inquiry" By Customs*

In the Spring of 1970, Browning Arms shifted the manufacture of the .22 rifle to the Miroku Firearms Company in Japan, where it was produced less expensively. At around the same time, Browning Arms learned that the rate of duty could be reduced by importing rifles in parts rather than fully assembled. Customs employees visited the Browning warehouse in December, 1970,

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*The Notice is reprinted on p. 3 of this Petition, *supra.*

to confirm the new procedure relating to the unassembled guns. Presumably satisfied that the parts were being imported properly, a Customs official for the first time, in a follow-up letter, raised the question of assists. He wrote, in part:

> . . . [I]t has been noted that Section 5, number 8 of the Special Customs Invoice has not been completed. This portion of the form pertains to assists. Does your company furnish the manufacturers in Belgium or Japan with any assists such as . . . tooling . . . design and development or financial assistance . . . ?

The letter, without question, sought disclosure of information explicitly and unequivocally permitted by the Treasury regulation to remain undisclosed. The defendant responded that he believed that Question 8 did not have to be answered and that he was confused by the request. In a later letter, Browning reiterated his confusion over the question and repeated a request made in his earlier letter for Customs to call and advise him "in detail to the proper procedure to be followed in the future as well as any adjustments we must make for the past. . . ." No such call was forthcoming.

This correspondence occurred over a two-year period, and in the Fall of 1973, a Customs representative assigned to Europe had prepared an extensive list of questions for FN concerning its exporting practices with Browning. FN's response took nearly eight months to complete, with Customs placing no particular time pressures or restrictions on whom to contact.

Two of the thirty-three questions dealt with the period 1970-1971, when FN was phasing out the manufacture of the .22 semi-automatic and allowed the price to rise from $24.95 in several increments, ending at $51.25. The questions essentially were: (1) why the "dramatic increase"; and, (2) if, as Browning Arms had indicated, the $24.95 price had been a negotiated one, what was the dollar amount of cost omitted from the price over the years. Despite the government's argument to the contrary, the answers given were indisputably truthful and totally

responsive. First, FN confirmed that the $24.95 price was way below the actual cost of the rifle and was kept there by mutual agreement with Browning Arms because, if allowed to rise, "duty above that level effectively would kill sales of this rifle." Second, FN furnished the actual cost figures of the rifle from the mid-sixties to 1971; the average cost per rifle over the years was approximately $40.00. In short, Customs not only obtained exactly what it asked for, it obtained exactly what was necessary and material in order to claim revaluation of the .22 semi-automatics on the basis of true cost (as opposed to invoice price).

Customs was not told that assists in the form of supplemental payments were paid to FN over the years because the fact the payments were made did not affect the cost of manufacturing the rifle. Since it was *value* which was the material inquiry and because it was *cost* that was asked for to determine value, the answers as given were complete; disclosure of the supplemental payments would have been gratuitous.

As one of the people whose advice FN sought in preparing its response, the Petitioner concurred in FN's decision not to disclose the payments. Browning spoke with FN by telephone and reiterated his belief that the payments, at least at that point and on the basis of the questions asked, did not have to be disclosed. He acknowledged that if Customs squarely asked for the payments, they would have to be told of them, but he was concerned in that event about what they should be called; he thought the expression "side payments" crude and dangerous. It is true that he speculated that if the payments had to be disclosed, the labels placed on the "side payments" might have to be changed.

However ill-advised the defendant's musings were, the fact remains that his conversation constituted mere speculation as to a course of conduct should the question of the payments be asked. No new characterizations were in fact furnished because Customs never asked FN about the payments. Consequently, the Customs inquiry was not delayed, impeded or affected in any way. As such, the defendant's contemplations remain just

that, and cannot support the criminal charge of obstructing the proceedings.

Reasons for Granting the Writ

Each of the issues presented by petitioner is of importance to the future administration of federal criminal law. The first issue presented is whether criminal sanctions should be imposed for the alleged "obstruction" of information which was substantively already in the possession of the government, and which, in any event, was not material to the specific inquiry. The second is whether the concept of *Bronston* v. *United States,* 409 U.S. 352 (1973), dealing with literal truth, should be applicable to the facts of this case. The third is whether the unwarranted and unprecedented elevation of the informal and leisurely questioning of a foreign corporation amounts to a "proceeding" under 18 U.S.C. §1505.

A. The Evidence is Insufficient to Sustain the Conviction for Obstructing the Customs Inquiry Because the Defendant's Advice Related to an Immaterial Matter.

The clear purpose of the 1974 inquiry was to gather information from FN to enable Customs to revalue and recalculate the duty on rifles imported over the years at what it believed was an unrealistically low price. Here, Customs knew prior to the inquiry that the cost of the rifle exceeded the invoice price and that the latter was a negotiated ceiling, calculated not to make a profit, but to keep the duty low. Price, it felt, was not reflective of true value; cost would be. Therefore, it was the cost which it needed, wanted and asked for. Knowledge of any inducements paid to FN over the years to keep the price low simply was unnecessary to this method of revaluation. In this context then, the supplemental payments are totally immaterial; the costs are the costs regardless of the payments received.

In short, Customs *was* supplied with the information necessary to complete the investigation. This is borne out by the fact

that the discovery later that side payments had been made *in no way* affected the revaluation process. The only use the government was able to make of this information was to form the basis of the criminal charge which is the subject of this petition.

A conviction on similar facts was reversed by the Ninth Circuit Court of Appeals in *United States* v. *Ryan,* 455 F.2d 728 (9th Cir. 1972). Prior to the issuance of subpoenas, the defendant, who was under a grand jury investigation for income tax evasion, had instructed his secretary to destroy membership *cards* of a club showing a certain third party to have been the benefactor of many members; he did not instruct her to destroy membership *applications* containing the same information. After the subpoena—calling for these and all other records of the club—was served, the defendant instructed the secretary to continue to destroy the membership cards. Finding that the destruction of these records did not constitute obstruction of justice because the benefactor's largesse had no bearing on the income tax liability of the defendant, and further, because the applications provided the government with the same information contained on the destroyed cards, the court held there can be no obstruction when the hidden information is immaterial to the inquiry. It said:

> "The burden of proof was upon the government to prove that the production of the membership cards would throw some light on the subject of the grand jury investigation. *Foster* v. *United States,* [265 F.2d 183 (2d Cir.), *cert. denied,* 360 U.S. 912 (1959)]. It offered no proof," 455 F.2d at 734.

This import of this case is clear: regardless of the conduct, be it destruction of records or advising a respondent how to answer a question, the government must show that the defendant's actions relate to a matter which was material to the proceeding; if not, the government has failed to prove a charge of obstructing that proceeding.

Here, as in *Ryan,* the burden of proof was on the government to prove that disclosure of the supplemental payments "would

throw some light on the subject" of costs. It did not and could not do so. The information bore no relevance to the Customs inquiry and was, in fact, never requested. As much as the prosecution attempted to point its finger in shame at the defendant for "concealing" the payments, the fact is that the government was unable to, and did not, explain how that conduct stalled, thwarted, hindered, or impeded Customs in any way in their revaluation of the rifles. In short, the act of advising concealment of the payments, as with the act of destroying the membership cards in *Ryan,* was nothing more than a side issue to the real purpose of the inquiry, and despite the attempts to bolster the wickedness involved, the assertedly offensive conduct was irrelevant to the real concern of Customs.

This Court should review—and speak to—the misuse of the criminal obstruction statutes to fashion a crime out of the decision not to disclose obviously immaterial information.

B. The Literal Truth was Counseled by Petitioner and Furnished to Customs, Thus Voiding a Notion of "Obstruction."

Since Customs did not ask for the payments specifically and since they were immaterial to the inquiry, the answers here which omitted the payments were, in fact, totally truthful. As such, a charge of "obstruction" should not lie for advice not to volunteer unrequested information.

The rationale of *Bronston* v. *United States,* 409 U.S. 352 (1973)—held inapplicable by the courts below—should be dispositive in this case. In *Bronston,* this Court reversed the defendant's conviction on the ground that the charge of perjury does not reach a literally true answer, even if the witness intends to mislead his questioner by the answer and even if the answer, whether phrased in the negative or in the affirmative, is arguably "false by negative implication." 409 U.S. at 361. The Court reasoned that to the degree that a literally true answer is unsatisfactory, it

should "alert [the examiner] to press on for the information he desires . . . or reframe his initial question with greater precision." *Id.* at 362.

The reasoning of *Bronston* is sound. If literally truthful answers to broad and unspecific questions are held actionable, every citizen in this era of growing bureaucratic inquisitiveness faces the potential of harassment by piqued officials, who later could claim that the respondent should have realized what level of completeness was expected originally. Such power can lead to serious abuse and would further no legitimate governmental aims, especially when, as in *Bronston, supra,* and as in this case, the scope and direction of the questioning, and the ability to proffer follow-up questions if the answer is deemed incomplete, rests totally in the hands of the government. Whatever the harsh consequences of lying or counseling someone else to lie to the government should be, no such consequence should flow from furnishing the truth, even if the truth is deemed to be incomplete. In the latter case, the burden should shift to the questioner to focus and delve.

Here, the later-discovered fact that supplemental payments were furnished FN over the years was used by the prosecution, in effect if not in intent, to create a wholly imaginary harm to the 1974 inquiry. Information about the payments have not been used in any substantive way by Customs, except for purposes of these proceedings. Perhaps annoyed by Browning's suggested technical formulations to Customs' imprecise questions, but also perhaps embarrassed at the laxity of enforcement over the years, the government, with hindsight, was permitted to urge that FN's answers, with Browning's advice, were criminally incomplete. Such unrestrained power to recast the nature and context of the question—to infer new meaning to words not readily apparent at the time—is precisely the vice and potential for governmental abuse *Bronston* seeks to eliminate.

The rationale of *Bronston* stands in stark contrast to the facile, imprecise and dangerously vague definitions of "obstruction" offered by the government below:

> "In our system of justice, we rely upon the citizen to be honest and forthcoming with law enforcement investigations. When they are not, they obstruct justice."
>
> "A truthful answer which purposely conceals facts obstructs an investigation, even if it is not a lie."

The *Bronston* decision speaks precisely to these simplistic generalizations, which permit the prosecution to use obstruction statutes against those thought not to be as "forthcoming" as an investigator might like, regardless of what precise question was asked, how it was answered, or whether the answer the government later claims to have been looking for was material to the investigation.

The government urged throughout the trial, and the prosecutor stressed in his summation, that during the investigation in 1974, the defendant caused FN to furnish "half-truths," concealing the "truth about the supplementary payments." The defense maintained throughout that the answers furnished to Customs by FN, and the defendant's concurrence in them, were truthful and responsive to the actual questions propounded; the fact that the payments were not disclosed was a function, not of the suppression of a required answer, but of the way the question was drawn. In short, the defense maintained there was no lie counseled or perpetrated. With this issue so sharply cast, it was crucial for the jury to be told the legal significance of furnishing the "literal truth" in response to a government question. In this setting, therefore, the failure of the District Judge to include a requested instruction under *Bronston* was error worthy of review by this Court.

There is no reason in logic or precedent to limit the *Bronston* doctrine to perjury cases, and in fact its teaching has been applied to other charges in the First, Seventh and Ninth Circuits. See, *United States* v. *Poutre*, Slip Op. No. 79-1193 (1st Cir.), December 31, 1980; *United States* v. *Kraase*, 484 F.2d 549, 552 (7th Cir. 1973). *Cf., United States* v. *Alter*, 482 F.2d 1016, 1027 (9th Cir. 1973). The rationale of *Bronston* should apply to all

situations where the scope and direction of the questioning is in the control of the government, whether the charge is perjury, or false statements, or obstruction of the proceedings.

The *Bronston* doctrine is clearly applicable to the facts of this case. Here, the two questions—why did the price rise and what was the true cost of the rifle—were answered truthfully. Since the government knew $24.95 was a negotiated price and not based on costs, it certainly could have asked directly if any inducements were given FN to keep the invoice price below $25.00; those questions absolutely would have required disclosure of the payments. The open-ended and broad question, "why?", invited the limited and circumscribed answer and mandated nothing more. Respondents simply should not be held accountable for truthful answers later deemed unsatisfactory because of omissions caused by the imprecision of the question.

Thus, the doctrine of literal truth should mandate a dismissal of the indictment, or, minimally, a new trial with proper jury instructions.

C. Petitioner Could Not Reasonably Have Assumed that the Inquiry by Customs was a "Proceeding" within the Meaning of 18 U.S.C. §1505.

The issue of whether the Customs inquiry constituted a "proceeding" before an agency within the meaning of 18 U.S.C. §1505 was argued to the Tenth Circuit Court of Appeals on the government's appeal from the dismissal of the indictment in *United States* v. *Browning*, 572 F.2d 720 (10th Cir.), *cert. denied* 439 U.S. 822 (1978). But the issue raised there was in a theoretical context based on the face of the indictment, no facts having been presented.

The facts as actually developed below show not one formal investigation, but rather a few intermittent questions by Customs stretching over a period of four years. It is not at all unusual for Customs to be in contact with importers and exporters and there-

fore defendant had no notice that Customs was conducting an "investigation" in which he should not interfere.

The purpose of the first visit by Customs agents in 1970 was to ascertain that the new method of importing unassembled parts was being properly utilized. Over the course of the next four years, Customs was in touch with Browning only sporadically, and in no sense often or formal enough for him to have reasonably assumed he should maintain a hands-off posture between himself and other people being questioned. Petitioner would have no reason to see anything improper about discussing a Customs matter, as he had countless times before, with his business associates at FN.

The concept that every contact by Customs is a "proceeding" dilutes the purpose of the obstruction statutes, which is to protect the integrity of the investigative process. If an individual is not reasonably aware an investigation is in progress, then that individual receives no fair warning that his involvement may be deemed criminal interference.

The cases originally relied on by the Tenth Circuit*, to the effect that an *investigation* is a "proceeding" within the meaning of 18 U.S.C. §1505, are inapposite to the facts here. All that has been demonstrated is that Petitioner helped answer a routine inquiry of an agency regularly in contact with his business. Such an inquiry, simply put, should not be deemed an investigation.

* * *

The growing public concern with—and the laudatory law enforcement emphasis on—"white collar crime," will, we submit, require the Courts to be more sensitive to the notion that the decision to prosecute some activity criminally rather than civilly

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*_United States_ v. _Fruchtman_, 421 F.2d 1019 (6th Cir.), _cert. denied_, 400 U.S. 849 (1970); _Rice_ v. _United States_, 356 F.2d 709 (8th Cir. 1966); _United States_ v. _Carzoli_, 447 F.2d 774 (7th Cir. 1971), _cert. denied_, 404 U.S. 1015 (1972); _United States_ v. _Vixie_, 532 F.2d 1277 (9th Cir. 1976); _United States_ v. _Batten_, 226 F. Supp. 492 (D.D.C. 1964), _cert. denied_ 380 U.S. 912 (1965).

rests almost exclusively with the judgment and discretion of the prosecution. The determination to prosecute bank robbers, kidnappers, or drug offenders criminally rather than civilly requires less sophisticated judgment than the determination of what should constitute a civil or criminal tax or securities violation; not all omissions on income tax returns or on filings with the Securities and Exchange Commission should be or are prosecuted criminally.

During the last twenty years, this Court has primarily focused on procedural safeguards applicable to the average criminal case; far less attention has been paid to the discretion of the prosecutor in substantively classifying some activity criminal rather than civil. The Judiciary today must apply its collective wisdom and life-experience to weed out those cases in which prosecutorial discretion was exercised mistakenly. We believe that the making of a crime from stretched and technical formulations—here the elevation of an agency inquiry into a formal "proceeding" and an unneeded answer into a "material omission"—raises serious questions of fair warning and notice. Simply put, the consequences of proscribed conduct must be reasonably clear and public before an individual should be branded a criminal.

We contend that, at bottom, the facts of this case—for each of the reasons advanced separately and collectively—exemplify the misuse of the "obstruction" concept to stretch relatively innocuous conduct into criminality and we respectfully urge this Court to grant the writ.

Conclusion

For the foregoing reasons, a writ of certiorari should issue to review the judgment of the Court of Appeals for the Tenth Circuit.

Respectfully submitted,

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April 6, 1981

Opinion of the Court of Appeals

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOHN VAL BROWNING,

Defendant-Appellant.

No. 79-1893

Filed Nov. 14, 1980
HOWARD K. PHILLIPS
Clerk

Appeal from the United States District Court
For the District of Utah
(D.C. No. CR 76 46)

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McWILLIAMS, BREITENSTEIN AND DOYLE, Circuit Judges.

Opinion of the Court of Appeals

DOYLE, Circuit Judge.

The defendant above named, who was formerly President of Browning Arms Company, here appeals a conviction on an indictment which charged that Browning, with knowledge of an ongoing investigation which was being conducted by the United States Custom Service, endeavored to obstruct the due and proper administration of the Customs duties laws as to material matters by advising and suggesting that an exporter of the Browning rifles give incomplete and misleading answers to questions which had been propounded by the Customs Service, contrary to 18 U.S.C. §1505[1].

This prosecution grows out of the importation by Browning Arms Company of great numbers of .22 caliber semi-automatic rifles from a Parisian firearms concern named Fabrique Nationale d'Arms de Guerre, which company will be referred to as FN. FN manufactured these rifles in accordance with specifications and designs provided by Browning Arms Company. The problem arose because of the fact that during the latter half of the 1960's, the Browning .22 caliber rifle could not be competitive with domestically manufactured .22 caliber rifles if they were priced in excess of $25.00, because of the fact that the duty increases on imports that are valued between $25.00 and $50.00. Accordingly, FN and Browning agreed to maintain the price of the .22 semi-automatic rifles at $24.95. At the same time Browning Arms Company agreed to make additional payments to FN in excess of that stated in the invoice price. In the year 1965, the Customs Service changed its special Customs invoice Form No. 5515 so as to require disclosure of all assists which were not included in the invoice price. Notwithstanding the amendment to Form No. 5515, the Treasury Department, in

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[1]Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which such proceeding is being had before such department or agency of the United States.

April of 1965, published a Notice of Intention to Delay requirements Revising Customs Form 5515, stating that the question on the form pertaining to assistance did not have to be answered. (Fed. Reg., April 19, 1965, at 5862). That question was not answered during the period 1965 through 1970, when there were nearly 200 invoices accompanying the shipment of .22 semi-automatic rifles from FN to Browning. Customs never requested that Browning answer the question. It was not until 1970, when Browning Arms Company transferred production of these rifles from FN to Japan that FN began to raise the invoice price of the rifles to reflect its true value. The invoice value is listed as $51.00 in the year 1971. Browning Arms instituted a new method of importing weapons in 1970, and the Customs Service sent investigators to see that Browning Arms was properly reporting under the new system. This investigation continued until 1975. Initially, the investigation was conducted by Trost and Regan. They discovered that various so-called "assists", the side payments paid to FN, amounted to as much as $18.40 for each weapon. The so-called assists were defined by Customs as payment by importer to exporter for tooling, design, development and other similar financial assistance. They did not include part of the cost or value of the weapon.

Early in the investigation, Mr. Regan, requested that Browning answer the question on the invoice pertaining to assistance. Browning responded that he was under the impression that the question did not have to be answered. But Regan wrote a letter to him saying that it was a part of the invoice.

After the transfer of production of the weapon to Japan and after FN raised the invoice price to a level of over $50.00, the investigators discovered that the company had not reported certain assists to the Customs Service from 1964 to 1970. Thereafter, the Customs Service, through Trost and Regan, conducted a full inquiry. They were unable to get sufficient information from the Browning companies, and another agent, one Duncan, was called into the case. Duncan concluded that it was necessary to

investigate FN, and he communicated with one Rudman, a Customs Service representative, in Paris, France. Rudman met with FN officials several times and obtained answers needed by the investigators in St. Louis. He dealt with Heidebroek of FN. One of the questions asked of Heidebroek was why the price of the .22 caliber rifles had risen from $24.95 to over $50.00 in 1970. Heidebroek asked for time to research the answer. He then sent a letter to Mr. Browning, telling him of the visit by Mr. Rudman. This was March 25, 1974. Heidebroek explained that the United States Customs wished to know whether the invoice values contained the costs of tooling. He also attached 33 questions which had been asked by Rudman. One of the questions to FN sought to have FN supply the dollar amount of the costs not reflected on the invoice for the .22 rifles. Heidebroek sent this letter to the defendant, so that he could comment on the questions and supply information. On June 4, 1974, Mr. Browning responded to the questions asked him by suggesting answers to the questions submitted in writing. One suggested answer said that, throughout the course of dealings with FN, Browning had stated the weapon had to cost below $25.00 or they could not place any orders, since the duty charged where the value was over $25.00 effectively killed sales of the rifles. The suggested answer went on to say that some time after May of 1970 it was realized that it would not long be possible to maintain the price at $25.00 by absorption in general overhead. "We, therefore, had to bring the price over the $25.00 level, even though we might lose this job entirely." The answer concluded that the price was accordingly allowed to increase, first to $34.50, then to $42.00, and finally, to $51.40.

As a result of the increase, the manufacture of this rifle was transferred to Japan. The defendant answered question 20 by telling FN to tell Customs that no documents existed. The answer suggested by Browning was for FN to tell Customs that one reason the price rose to $51.40 was because the side price was phased out in 1970. Also, defendant requested that FN tell Customs that the price had been maintained at $24.95 by absorbing

the loss on this rifle under the general overhead of FN. The truth was that there was a side price which was paying the so-called loss, rather than the loss being absorbed in general overhead. Thus, the defendant's answer sought to conceal from Customs the existence of the side price, and to have Customs believe instead that any costs to FN above $24.95 were being absorbed in overhead. In his communications to Heidebroek, the defendant acknowledged that even though the goal was to avoid side payments, that this should not be admitted because side payments would amount to fraud.

The charge is predicated on an attempted corrupt obstructing or impeding of due and proper administration of the law, and the charge itself was tied to the giving of incomplete and misleading answers to questions which had been asked by the Customs Service. Browning's appeal is based upon the following contentions:

A. That there was insufficient evidence to sustain a conviction.
B. That the Customs investigation could not be regarded as "due and proper administration of the law within the meaning of §1505", supra.
C. That the trial court erred in failing to instruct the jury that counseling literal and responsive answers to the questions presented constituted a defense of the charge, and,
D. That the government should be estopped from criminally prosecuting Browning.

A-1. Was the Evidence Sufficient to Sustain Appellant's Conviction for Obstructing Justice?

Was Appellant's Conduct Unrelated to a Material Issue in the Administrative Proceeding?

Appellant argues that the advice he gave to FN was not material to the Customs search. Appellant claims that in order to be convicted for obstruction of justice, the conduct constituting

the alleged offense must have been material to the investigation. United States v. Ryan, 455 F.2d 728 (9th Cir. 1972).

Unquestionably, the conduct of the accused must have been material to the investigation, but we conclude that the conduct of Browning was materially related to the investigation.

Browning argues that Customs was interested in discovering the costs of the rifles and not the price; that the supplemental payments were material to the price only, and not the cost. The cost to manufacture these rifles remained stable regardless of the price the company paid for the rifles. Therefore, Browning further argues, any advice he gave pertaining to supplemental payments was only relevant to a non-material issue of the investigation.

The object of the Customs investigation was to learn the *value* of the rifles imported by Browning, whereby the duty could be assessed. Mr. Hintz, Director of Classification and Value Division for the St. Louis Customs District, stated that in assessing the duty due on an imported item, the Customs Service determines the value and classification of the item. Mr. Trost, the import specialist from Customs, testified that value was the important element in determining the duty owed on imports. So also did Mr. William Rudman, Special Agent of the United States Customs Service, testify to that effect. The correspondence between Browning and FN personnel showed that the Browning and FN people were aware Customs was seeking to discover the value of the rifles, and that value had to do with price, as well as cost. 19 U.S.C. §1401(a) defines the term "value" as it pertains to imported merchandise and that section does not consider costs alone, but also considers price.

We must, therefore, hold that both cost and profit were and are material to the Customs investigation. Accordingly the information pertaining to the supplemental payments from Browning to FN become very material in determining the genuine value of the rifles for Customs purposes.

Browning maintains that inasmuch as FN had furnished the actual cost of the rifles to Customs that Customs knew the differential that existed between the invoice price and the actual cost, and that it was not necessary that customs know the manner of compensating for the differential. Browning, however, is now talking about a document in which FN furnished the actual cost to Customs, which is dated July 22, 1974, long after the relevant period of the Customs inquiry. This document was furnished to Customs after the dates when Browning was attempting to encourage FN to give misleading answers to the questions submitted by Customs. Browning's telex to FN suggesting answers to the questions asked by Customs was sent June 4, 1974, and the relevant telephone call from Browning which made other suggestions as to answers to give to Customs was on June 5, 1974. So, at the time of Browning's alleged effort to pursuade FN to give false answers the Customs officials had not learned about the actual cost profits or price of the rifles.

Unquestionably the Customs had a legitimate interest in ascertaining the value of the rifles in order to determine how much tax was due on them. The value includes not only the cost of production of the rifles, it includes as well all relevant factors making up the price. So, when there were communications having to do with value, these were material to the investigation. It cannot be said, therefore, that the applicant's conduct was unrelated to a material issue in the administrative proceeding and it cannot be said that his contention that the evidence was insufficient to establish obstruction of justice was valid.

A-2. Is the Evidence Insufficient to Sustain a Conviction Since Appellant Contends That he Merely Counseled the Omission of Unrequested Information Correct Whereby it Did Not Result in a False Statement and Did Not Hinder the Proceeding.

Browning relies on the Supreme Court's decision in Bronston v. United States, 409 U.S. 352 (1973) to support and illustrate his contention that he is not to be prosecuted for advising FN to

give a literally true answer to the questions asked by Customs. But Bronston differs from the case that we now consider. Bronston involved a perjury prosecution in which the question was whether the defendant had told the truth. The ultimate question in the case at bar is not whether the defendant told the truth but whether the defendant obstructed or interfered with the process of truthfinding in an investigation in the process of enforcing the law. In other words, was the defendant, Mr. Browning, seeking to counsel FN to answer the questions in a manner which would interfere with the process of truthfinding? Literal truth is not the test here, and, in any event, Browning did not counsel FN to tell the literal truth.

In the telex communicated by Browning to FN June 4, 1974 FN was advised to say in answering question 9 to the Customs officials that the reason that the price increased from 1970 to 1971 over $25.00 a unit was because:

> * * * * "about May 1970 we realized that it would no longer be possible to maintain the price of 25 dlrs by absorption in general overhead. We therefore, had to bring the price over the 25 dlr level even though we might lose this business entirely. The price was accordingly allowed to increase, first to 34.50 dlrs, then to 42.00 dlrs, and it finally became 51.40 dlrs * * * *."

The misstatement was the recitation within the quoted material that the price had long been maintained at $25.00 by absorption in general overhead. This was plainly false. Browning had paid the cost, including the $25.00 invoice price, by giving supplemental payments to FN under the guise of reimbursement of development expenses. It is obvious, therefore, that Browning counseled FN to misstate the facts, to give an incorrect answer to a specific question propounded by Customs.

The foregoing is supported by the phone call that Browning made to Mr. van der Rest of FN which took place June 5, 1974 in which Browning told van der Rest that:

> "what is overall to be avoided is that they [Customs] would be given the information that, with the .22 rifles side payments have been done. The Customs will very well know the goal of what we have done but to say squarely that side payments have been done is a matter of fraud."

So again Browning did not advise FN to tell the literal truth about the side payments. Browning counseled FN not to reveal the facts about the side payments.

In view of the fact that Customs was not told the literal truth, and that FN was counseled by Browning as to how to avoid telling the truth, Browning is in a poor way to maintain that he did not contribute to the obstruction of the enforcement of the laws.

A-3. Did the Conduct of the Defendant Considered as a Whole Constitute a Finding That the Defendant Acted Corruptly as Required by the Statute?

The essence of the argument on Browning's behalf is that an additional element enters into a determination of whether his conduct was corrupt. Counsel states that there is no proof of sinister behavior and hence the evidence fails to establish this essential requirement. We disagree.

It is said that the defendant in his conversations with FN was not seeking profit for himself; that he was acting on behalf of his company; that the payments were by check from one corporation to another; that the defendant was under no mandate from Customs not to talk to FN and that as a result defendant did not act corruptly. The argument becomes less valid when counsel states that Browning "neither lied nor counseled a lie." But Browning did counsel the FN officer to answer the questions submitted in a manner which would mislead the government in its quest for information with which to determine the value of the imported rifles. The government's case is based on all of the

basic facts and the reasonable inferences which flow from those facts and these speak loudly to the proposition that the attempt was made to misrepresent the value of these rifles and thereby pay a greatly reduced custom duty.

Counsel next pleads that he was never warned that this conduct was in violation of law. Any reasonable man would realize that conduct which sought to mislead and did mislead the government as to the amount to be paid for import duty was unlawful, and, therefore, it was not necessary for Browning to be aware of the exact details of the statute.

Finally we are told by counsel that there was nothing evil or sinful in Browning's conduct, that the only evil existed, perhaps, in Browning's thoughts. Wrong. The fact that Browning did not tell the FN listener that he wanted him to defraud the government is immaterial. The sum total of the background and the advice is sufficient to show that such was Browning's intent.

In recent months we have considered this issue. The case was United States v. Ogle, 613 F.2d 233 (10th Cir., 1979). We there said that the term "corruptly" as used in obstruction of justice statutes "is directed to the effort to bring about a particular result such as affecting the verdict of a jury on the testimony of a witness. . . . This is *per se* obstruction of justice. . . ." Id. at 239. We further said that if the jury in the subject case in which the defendant was seeking to influence the verdict of the jury believed that the defendant had done the acts complained of that this would be sufficient evidence to sustain the defendant's conviction. Although the efforts of Browning were somewhat more subtle than the acts of Ogle, there is no difference in terms of legal effect.

In United States v. Browning, 572 F.2d 720 (10th Cir. 1978), *cert. denied,* 434 U.S. 822, we were called upon to construe the statutes under which this indictment was reached, i.e. 18 U.S.C. §1505. A motion to dismiss the indictment had been granted and

it was contended that advising another to give false statements did not constitute a corrupt act. Because of this argument in support of a motion to dismiss and in the absence of evidence, we considered and discussed the meaning of corruption under the statute.

The district court had ruled in dismissing the indictment that only "evil means" such as coercion and intimidation of witnesses constitute a violation. We added:

> "The authorities are to the contrary. They hold that advising or procuring false testimony or statements comes within the prohibition of the obstruction of justice statutes. See United States v. Abrams, 427 F.2d 86 (3d Cir.), *cert. denied,* 400 U.S. 832, 91 S.Ct. 64, 21 L.Ed.2d 63 (1970), (§1505); Cole v. United States, 329 F.2d 437 (9th Cir. 1964), *cert. denied,* 377 U.S. 954, 84 S.Ct. 1630, 12 L.Ed. 2d 497 (1964) (§1503); Stein v. United States, 337 F.2d 14 (9th Cir. 1964). In United States v. Henderson, 386 F. Supp. 1048 (S.D.N.Y. 1974), the court said: 'Under sections 1503 and 1505 the word "corruptly" has been given a broad and all-inclusive meaning; both sections have been held to encompass obstruction in the absence of force or threats. . . . 386 F. Supp. at 1055.'

572 F.2d at 724-725.

The jury would, of course, in order to find that Browning acted corruptly, have to find that under the evidence presented Browning advised FN to give false statements or acted in a manner to produce a result which would obstruct the investigation. Such a finding by the jury would fulfill the requirement that Browning's conduct was corrupt. In effect the jury did so find and the evidence was sufficient to allow it to so find. Therefore, counsel's argument, although ingenious, is insufficient.

B. Did the Inquiry by Customs Constitute "Due and Proper Administration of the Law" Within the Meaning of the Statute?

Counsel for Browning here argues that William Rudman, the Customs official assigned to question FN, was without official authority to conduct an investigation of a foreign company, and thus, since there was no authority for Rudman to conduct an investigation of FN and since, therefore, Rudman's efforts did not constitute an "official inquiry", Browning's endeavor to influence the results of the questions could not constitute an attempt to obstruct "the due and proper administration of the laws." The contention is based on a faulty premise, namely that the investigation was of FN. The United States Customs was engaged in an investigation of Browning Arms Co., a United States concern; FN was not the culprit. Rudman was asked to talk to the officials of FN regarding the ongoing investigation of Browning Arms Co.

Viewed in this light the questioning of FN in furtherance of the Browning investigation constituted the due and proper administration of the laws regulating Customs investigations of United States companies. Rudman was performing duties required of him as an investigator for the United States Customs Service. The questioning of the FN officials was a valid part of the administrative investigation and it follows that the claim must be denied.

C. Did the Evidence Justify the Submission of an Instruction to the Jury That the Counseling of Literally True and Responsive Answers to the Questions Presented was a Defense to Count I of the Indictment Against Browning?

The requested instruction would be justified only if there existed at least a fighting question as to whether Browning had instructed literally true and responsive answers. Or, stated differently, did Browning merely select a different way of answering the question and did this alternative answer constitute a

true response? Under the circumstances presented this instruction would be misleading and confusing. We must hold that the action of the trial court in refusing the proposed instruction was correct.

D. Should the Government be Estopped from Criminally Prosecuting the Appellant as a Result of Their Having Allegedly Misled Him.

The general thrust of Browning's argument here is that he was misled by investigator Regan to believe that he had acted illegally over the years in not answering the question regarding assists on the Customs invoices, and that the alleged obstruction of justice occurred because of that misinformation, since Browning argues that if Regan were correct and Browning should have been disclosing the assists, Browning Arms would have faced financial ruin. As a consequence Browning decided to not divulge the information regarding supplementary payments to FN.

Quite apart from the proposition that Browning was not shown to have been misled or to have acted on the basis of having been misled, (Browning acted out of expediency; he sought to avoid high import duties by misrepresenting the value) the law of estoppel in relationship to the government is not available to Browning. The courts invoke the doctrine of estoppel against the government with great reluctance. The only circumstances justifying use of the doctrine are those which add up to the conclusion that it does not interfere with underlying government policies or unduly undermine the correct enforcement of a particular law or regulation. See generally Annot., 27 ALR Fed. 702 (1976).

It is fundamental that the United States is not estopped by representations made by an agent without authority to bind the government in a transaction. Jackson v. United States, 573 F.2d 1189 (Ct. Cl. 1978); Albrechsten v. Andrus, 570 F.2d 906 (10th Cir.), *cert. denied,* 439 U.S. 818 (1978); Enfield v.

Kleppe, 566 F.2d 1139, (10th Cir. 1977); Atlantic Richfield Co. v. Hickel, 432 F.2d 587, 591-592 (10th Cir. 1970); Massaglia v. Commissioner of Internal Revenue, 286 F.2d 258, 262 (10th Cir. 1961).

It has been held that one who relies on a legal interpretation by a governmental official assumes the risk that it is in error. Airmotive Engineering Corp. v. United States, 535 F.2d 8, 11, n.3 (Ct. Cl. 1976). It has also been held or said that "the government could scarcely function if it were bound by its employees' unauthorized representations.'" Goldberg v. Weinberger, 546 F.2d 477, 480 (2nd Cir. 1976), *cert. denied,* 431 U.S. 937 (1977).

We regard this entire effort as an expedient position which was not the real cause of his activity. The real cause of keeping the supplemental payments secret was the need to keep the price of the rifles down and therefore, the need to reduce the amount of duty. United States v. Pennsylvania Industrial Chemical Corporation, 411 U.S. 655 (1973) is not germane. That case stands for the proposition that if a defendant relies in good faith on a government regulation the government may be prevented from criminally prosecuting that defendant for acting pursuant to it. In *Pennsylvania* the defendant had been charged with violating a statute and the defendant maintained that a government regulation permitted him to do what he had done. The court, however, held that the defense should be allowed to show that he relied in good faith on a government regulation. If the defendant were able to establish good faith reliance the court said that the government should then be prevented from prosecuting him.

The government's position is that the *Pennsylvania* decision is wholly different on its facts from the case at bar. In the case presented the defendant did not make a false statement upon an invoice or entry, and thereby violate a statute which a regulation was in conflict with. In *Pennsylvania,* the defendant claimed that he acted as a result of confusion as to whether he had in law violated a statute which a regulation seemed to be in con-

flict with, and which regulation allowed him to follow the course which he took. In the case at bar, the government points out that there is no governmentally caused confusion. The defendant is unable to establish that he had a good faith belief which allowed him to misstate and attempt to persuade FN to misstate the value of the imported rifles. The effect, therefore, of the government's argument is that any confusion that Browning may have had did not and could not have served to justify continuing the deceitful practices in question since the conduct of Browning was foreign to any misconception which he contends existed.

Browning admitted that his sole purpose in making the supplemental payments to FN was so as to keep the price of the .22 semi-automatic rifle imported from Belgium competitive with the price of similar rifles manufactured in this country. Had he disclosed the fact of the supplemental payments to Customs the duty on the .22s would have risen substantially, and it would not have been possible for Browning to sell the .22s in a competitive market. These uncontested facts lead to the conclusion that the reason Browning paid the amount of the price above $24.95 as supplemental payments to FN rather than disclosing that amount as part of the invoice price was that Browning had not intended to tell Customs of that additional figure.

The United States Supreme Court has spoken on this. It stated in Federal Crop Insurance Corporation v. Merrill, 332 U.S. 380, 68 S.Ct. 1, 92 L.Ed. 10 (1947), that, as a general rule, the government would not be bound by the incorrect and misleading statements of its agents. It refused to apply the private law principles of estoppel against the government because it obviously considered that the government's policies, which have general social significance, should not be at the mercy of an errant government official. In *Merrill,* as in the instant case, a government official had given the plaintiff information which was in contradiction to the applicable government regulation. The court refused to hold the government bound (or estopped) by the erroneous information given by the government's representative.

In the case at bar, at least one government agent, Regan, did misinform Browning regarding the requirements to be complied with when filling out the Custom forms. The statements made by Regan were incorrect. Under the settled law, however, incorrect statements made by a government official may not serve as a basis for holding the government estopped from enforcing its regulations even if the misinformation had led to Browning's subsequent conduct.

Even if this were not the law, it was not shown that Browning relied on Regan's statements. Additionally even if Regan's statements *could* be used as a basis for holding the government estopped, and even if Browning *had* relied on Regan's statements, Browning is in a poor position to use the doctrine. Principles of estoppel may not be used to justify a persons deliberate violation of one statute in order to escape liability under another statute.

We conclude that the trial court did not err in either the particulars relied on or otherwise.

We affirm

Judgment of the Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

SEPTEMBER TERM – November 14, 1980

Before Honorable Robert H. McWilliams, Honorable Jean S. Breitenstein, and Honorable William E. Doyle, Circuit Judges.

UNITED STATES OF AMERICA,

Plaintiff- Appellee,

v.

JOHN VAL BROWNING,

Defendant-Appellant.

JUDGMENT
No. 79-1893
(D.C. No. 76-46)

This cause came on to be heard on the record on appeal from the United States District Court for the District of Utah and was argued by counsel.

Upon consideration whereof, it is ordered that the judgment of that court is affirmed. It is the further order of this court that John Val Browning, appellant, shall, within ten (10) days from and after the date of the filing of the mandate of this court in the district court, surrender himself to the custody of the United States Marshal for the District of Utah in execution of the judgment and sentence imposed upon him.

The District Court may, in its discretion, permit the appellant to surrender directly to the designated Bureau of Prisons institution for service of sentence.

HOWARD K. PHILLIPS, Clerk

Order Denying Petition for Rehearing

JANUARY TERM — February 5, 1981

Before Honorable Oliver Seth, Chief Judge, Honorable Jean S. Breitenstein, Honorable William J. Holloway, Jr., Honorable Robert H. McWilliams, Honorable James E. Barrett, Honorable William E. Doyle, Honorable Monroe G. McKay, Honorable James K. Logan and Honorable Stephanie K. Seymour, Circuit Judges

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOHN VAL BROWNING,

Defendant-Appellant.

No. 79-1893

This matter comes on for consideration of appellant's petition for rehearing and suggestion for rehearing en banc.

Upon consideration whereof, the petition for rehearing is denied by the panel that rendered the decision sought to be reheard.

The suggestion for rehearing en banc having been transmitted to the members of the panel and the judges of the court who are in regular active service and no judge in regular active service or a judge who was a member of the panel that rendered the opinion sought to be reheard having requested a vote on such a suggestion made by a party, Rule 35(b) Federal Rules of Appellate Procedure, the suggestion for rehearing is denied.

HOWARD K. PHILLIPS, Clerk

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Special Customs Invoice Form 5515

Customs Form 5515
TREASURY DEPARTMENT
Mrt. 1965

Attach Additional Sheets Here

Read Carefully Instructions for Preparation of Invoice

(THIS FORM DOES NOT REQUIRE CERTIFICATION BY A UNITED STATES CONSULAR OFFICER)

SPECIAL CUSTOMS INVOICE

BUREAU OF CUSTOMS

(Original only required for customs purposes)

I. THIS SECTION TO BE FILLED IN FOR EVERY SHIPMENT

1. How were goods obtained by importer? By purchase or agreement to purchase ☐
   By some means other than a purchase ☐
   DO NOT INCLUDE PURCHASE AND NONPURCHASE GOODS IN SAME INVOICE. USE SEPARATE INVOICE FOR EACH.

2. Place (city and country) and date obtained by importer

3. Name of exporting carrier

4. Date of shipment

II. TO BE FILLED IN IF GOODS WERE PURCHASED OR AGREED TO BE PURCHASED

1. Name and address of seller
2. Name and address of purchaser
3. Date order accepted

III. TO BE FILLED IN IF GOODS WERE NOT PURCHASED

1. Name and address of person from whom goods were obtained
2. Name and address of consignee
3. Name and address of person for whose account goods are shipped

IV. This Section To Be Filled In For Every Shipment

(1) Marks and Numbers on Shipper's Packages	(2) Manufacturer's or Seller's Numbers or Symbols	(3) Quantity and Full Description of Goods (State contents of each package and importer's numbers or symbols, if any)	(4) Invoice Unit Price or Value	(5) Invoice Totals and Show Separately Packing Costs: All Other Costs, Charges, and Expenses	(6) Current Unit Price for Home Consumption in Home Currency	(7) Current Unit Price for Export to United States

* * *

V. This Section To Be Filled In For Every Shipment

* * *

8. (A) Did production of goods involve costs for "assists" (i.e.—dies, molds, tooling, printing plates, patterns, drawings, blueprints, artwork, engineering work, design and development, financial assistance) *not included* in the invoice price?

☐ Yes ☐ No. If yes, identify nature of assist involved ....., and complete Part B.

(B) (1) Assists valued at .....were supplied by:
(unknown if applicable)

☐ Manufacturer ☐ Importer ☐ Other (Identify) .....

(2) Assists were: ☐ (a) Supplied without cost. ☐ (b) Supplied on rental basis.
☐ (c) Invoice separately. If (c), attach copy of invoice.